

Kelowna, B.C.

Called to the Bar: May 12, 1981

Discipline hearing panel: June 30, 1999

Richard Margetts, as a one-Bencher panel by consent

Joel Mackoff, for the Law Society

James Taylor, Q.C., for Mr. Welder

Hearing report indexed as [1999] LSBC 35

Summary

The B.C. Court of Appeal determined that certain property received by M from her father was in trust for M and her three sisters. Mr. Welder represented M and assisted her in attempting to breach the terms of the trust and defeat the beneficial interest of her sisters. Mr. Welder did so by preparing for execution by M's father a settlement agreement and a consent for reversal of judgment without notice to M's sisters. He also prepared a notice of intention to act in person, for execution by M's father, without notice to the father's lawyer. Mr. Welder subsequently filed a praecipe, the consent for reversal of judgment and the notice of intention to act in person in the Supreme Court of Canada, without notifying M's sisters, their lawyer or the lawyer acting for M's father. Mr. Welder admitted that his conduct constituted professional misconduct. His admission and proposed disciplinary action were accepted by the Discipline Committee and the discipline hearing panel. The panel accordingly ordered that Mr. Welder be suspended for 60 days, effective July 1, 1999, and pay \$6,500 as costs of the hearing.

Facts

In August, 1995 the B.C. Court of Appeal determined that property received by Mr. Welder's client (M) from her father was in trust for M and for her three sisters. In early May, 1996 the lawyer representing the sisters advised Mr. Welder that the sisters wished to be involved in any negotiations involving the property.

Shortly thereafter Mr. Welder drafted a settlement agreement and consent for reversal of judgment, for execution by M's father. These documents were intended to reverse the determination of the Court of Appeal, all without notice to M's sisters or their solicitor. Mr. Welder also drafted a notice of intention to act in person for execution by her father, without notifying the lawyer representing M's father.

Mr. Welder subsequently executed a praecipe and delivered it to an agent in Ottawa for filing in the Supreme Court of Canada, along with the consent and notice of intention to act in person, which M's father had executed. At the time, Mr. Welder believed that filing the praecipe, with the accompanying consent and notice of intention to act in person, would effectively reverse the determination of the Court of Appeal. He filed these materials without notice to M's sisters, their lawyer or the lawyer who represented M's father.

Decision

Mr. Welder admitted that his conduct in knowingly assisting his client to attempt to breach a trust and to wrongfully defeat the beneficial interest of his client's sisters in property constituted professional misconduct.

His admission was accepted by the Discipline Committee and by the discipline hearing panel. The panel noted that it was troubled by the proposed conditional admission, given the gravity of the misconduct alleged. The panel said it would have rejected the admission, but for the fact that both counsel and the Discipline Committee had accepted it. Further, counsel spent considerable time reviewing the authorities, which demonstrated that the proposed penalty was within the range for matters of a reasonably similar nature.

Penalty

The panel noted the range of penalties presented for offences of this type ranged from suspensions of two to four months and, in these particular circumstances, the appropriate penalty would be at the high end of the range, but for the tendering of the conditional admission.

The panel accordingly accepted Mr. Welder's proposed disciplinary action, and ordered that he:

1. be suspended for 60 days, effective July 1, 1999; and
2. pay \$6,500 as costs within 120 days.